

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. THERIOT and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Beaumont, TX

*Docket No. 00-1344; Submitted on the Record;
Issued March 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a seven percent impairment of his right upper extremity, for which he received a schedule award.

On May 17, 1997 appellant, a 60-year-old air conditioning equipment mechanic, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained a torn rotator cuff in his right shoulder as a result of his federal employment. Appellant identified November 26, 1996 as the date he first realized that his condition was employment related. The Office of Workers' Compensation Programs accepted appellant's claim for right rotator cuff tear and authorized arthroscopic surgery, which was performed on June 24, 1997. By decision dated December 8, 1999, the Office granted appellant a schedule award for a seven percent permanent impairment of his right upper extremity. The award covered a period of 21.84 weeks.

The Board finds that appellant has not establish that he has more than a seven percent permanent impairment of his right upper extremity.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.²

¹ 5 U.S.C. § 8107.

² *James J. Hjort*, 45 ECAB 595 (1994).

Appellant's treating physician, Dr. Gary M. Gartsman, a Board-certified orthopedic surgeon, reported on June 29, 1998 that appellant had reached maximum medical improvement one year following surgical repair of his right rotator cuff. Although he noted that appellant had 0 percent impairment based on loss of movement, he explained that appellant had a 20 percent loss of strength, which corresponded to 7 percent impairment. The Office subsequently requested that Dr. Gartsman provide a permanent impairment rating in accordance with the A.M.A., *Guides* (4th ed. 1993).

In a report dated September 8, 1999, Dr. Gartsman explained that appellant had no restriction on active or passive movement and no sensory changes. However, he reported appellant had mild muscular atrophy around the infraspinatus fossa and that his strength to resisted elevation demonstrated a 20 percent loss of strength compared to appellant's left shoulder. Dr. Gartsman explained that, according to the "3^d Edition" of the A.M.A., *Guides*, appellant's loss of strength translated to a 6.6 percent permanent impairment of the right upper extremity.³

The Office subsequently referred the record, including Dr. Gartsman's recent reports, to its medical adviser; and in a report dated November 9, 1999, the Office medical adviser concluded that appellant had a seven percent permanent impairment of the right upper extremity. In reaching this conclusion, the Office medical adviser noted Dr. Gartsman's finding that appellant had full range of motion in his right shoulder. As such, appellant did not receive an impairment rating for loss of range of motion. With respect to appellant's loss of strength, which Dr. Gartsman described as a 20 percent loss due to "resisted elevation," the Office medical adviser related appellant's motor weakness to the area supplied by the axillary nerve. Relying upon Dr. Gartsman's estimate of a 20 percent loss of strength, the Office medical adviser properly calculated a 7 percent permanent impairment of the right upper extremity in accordance with Tables 12 and 15 of the A.M.A., *Guides* (4th ed. 1993), at pages 49 and 54, respectively. Appellant has presented no evidence to indicate that he has greater than a seven percent impairment.

Inasmuch as the Office medical adviser's calculation of appellant's right upper extremity impairment conforms to the A.M.A., *Guides* (4th ed. 1993), the medical adviser's finding constitutes the weight of the medical evidence.⁴ Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a seven percent impairment of the right upper extremity.⁵

³ Dr. Gartsman indicated that appellant would have to be referred to another physician in order to obtain a rating in accordance with the fourth edition of the A.M.A., *Guides*. As Dr. Gartsman did rely upon the A.M.A., *Guides* (4th ed. 1993) as a basis for his conclusion, his September 8, 1999 impairment rating is of diminished probative value in determining the extent of appellant's permanent impairment. *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

⁴ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁵ The Act provides that, for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1). In the instant case, appellant does not have a total or 100 percent loss of use of his right arm, but rather a 7 percent loss. As such, appellant is entitled to 7 percent of the 312 weeks of compensation, which is 21.84 weeks.

The December 8, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member